

Message Text

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TO AMEMBASSY PARIS IMMEDIATE
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PARIS PASS TO DEP LEGAL ADVISER LEE MARKS, OECD MISSION

E.O. 11652: N/A

TAGS: EAIR, FR

SUBJECT: CIVAIR: PAN AM CHANGE OF GAUGE

1. MEETING OF LEGAL EXPERTS ENDED WITHOUT SIGNIFICANT
DEVELOPMENTS. US DELEGATES WERE NOT IMPRESSED WITH
STRENGTH OF FRENCH LEGAL ARGUMENT. BOTH SIDES AGREED TO
REPORT BACK TO THEIR GOVERNMENTS ON SUBSTANCE OF TALKS.

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2. IN RESPONSE TO INQUIRY FROM FOREIGN MINISTER
DE GUIRINGAUD TO SECRETARY VANCE IN WASHINGTON LAST WEEK,
EMBASSY REQUESTED TO DELIVER AT HIGHEST APPROPRIATE LEVEL
FOLLOWING AIDE MEMOIRE TO DE GUIRINGAUD SOONEST.

3. A. "(COMPLEMENTARY OPENING) WE REFER TO THE PRESENT

DISPUTE BETWEEN OUR GOVERNMENTS RELATING TO THE PAN AM CHANGE OF GAUGE IN LONDON AND TO THE MEETING OF LEGAL EXPERTS ON THIS SUBJECT HELD IN WASHINGTON ON JUNE 1 AND 2. THE GOVERNMENT OF THE UNITED STATES HAS RECEIVED A FULL REPORT FROM ITS DELEGATION AT THOSE TALKS, AND WE REMAIN CONVINCED OF THE MERITS OF OUR LEGAL POSITION. WE WOULD SINCERELY HOPE THAT THE GOVERNMENT OF THE FRENCH REPUBLIC WOULD, AS A RESULT OF THE DETAILED LEGAL DISCUSSION, RECONSIDER ITS OPPOSITION TO THE DISPUTED CHANGE OF GAUGE.

B. "IN THE EVENT THE FRENCH POSITION IS NOT CHANGED, THE UNITED STATES RENEWS ITS PROPOSAL THAT THE MATTER BE SUBMITTED TO IMPARTIAL ARBITRATION. A DRAFT ARBITRAL COMPROMIS WAS PRESENTED TO THE FRENCH DELEGATION OF LEGAL EXPERTS IN WASHINGTON ON JUNE 2. WE WOULD HOPE THAT THE DETAILS OF THE ARBITRAL PROCESS CAN BE PROMPTLY AGREED TO, SO THAT AN EARLY END OF THE EXISTING DISPUTE CAN BE ACHIEVED.

C. "THE UNITED STATES REMAINS DEEPLY DISAPPOINTED THAT THE GOVERNMENT OF THE FRENCH REPUBLIC HAS CONTINUED TO PREVENT PAN AM FROM CONDUCTING ITS SAN FRANCISCO-LONDON-PARIS FLIGHTS WITH A CHANGE OF GAUGE IN LONDON. THIS ACTION HAS PREVENTED OUR AIRLINE FROM SERVING PARIS IN A MANNER THAT IS FULLY CONSISTENT WITH THE US-FRANCE AIR TRANSPORT AGREEMENT, WITH THE RESULT OF SUBSTANTIAL LOSSES LIMITED OFFICIAL USE

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TO THE AIRLINE AND INCONVENIENCE TO THE TRAVELING PUBLIC. WE WOULD THEREFORE SINCERELY HOPE THAT THE GOVERNMENT OF THE FRENCH REPUBLIC WOULD, IN A SPIRIT OF ACCOMMODATION AND FAIRNESS, ALLOW THE OPERATION IN QUESTION PENDING A RESOLUTION OF THE MATTER BY THE ARBITRAL PANEL. THIS STEP COULD BE TAKEN WITHOUT ANY PREJUDICE TO THE FRENCH LEGAL POSITION, AND WOULD BE RECOGNIZED BY THE UNITED STATES TO BE A COOPERATIVE AND POSITIVE ACTION. THE UNITED STATES WOULD BE PREPARED IN TURN TO COOPERATE FULLY WITH THE GOVERNMENT OF THE FRENCH REPUBLIC IN ENSURING THAT AN ARBITRAL DECISION IS OBTAINED AS EXPEDITIOUSLY AS POSSIBLE. (COMPLEMENTARY CLOSING)"

4. EMBASSY REQUESTED TO MAKE FOLLOWING POINTS ORALLY UPON PRESENTATION OF AIDE MEMOIRE:

A. AS RESULT OF LEGAL EXPERTS MEETING, U.S. REMAINS FULLY CONVINCED OF MERITS OF ITS LEGAL POSITION. HISTORICAL EVIDENCE SHOWS MANY CHANGES OF GAUGE, INCLUDING ONES APPROVED BY FRENCH, THAT ARE INCONSISTENT WITH FRENCH POSITION. WE ARE THEREFORE ALL THE MORE CONCERNED BY THE GROUNDING OF PAN AM.

B. WE SEE LITTLE PROSPECT THAT FURTHER DIPLOMATIC TALKS CAN RESOLVE THE MATTER, ALTHOUGH WE WILL ENGAGE IN SUCH TALKS IF FRENCH FEEL STRONGLY THAT THEY SHOULD BE HELD. OUR PROBLEM IS THAT, GIVEN IMPORTANT PRECEDENCE OF THIS DISPUTE WITH OTHER NATIONS (WHICH HAVE APPARENTLY BEEN FULLY INFORMED BY THE FRENCH), WE CANNOT TRADE ECONOMIC BENEFITS FOR THE CHANGE-OF-GAUGE RIGHT WE ALREADY HAVE. U.S. SEES ARBITRATION AS ONLY POSSIBLE SOLUTION.

C. PENDING ARBITRATION, U.S. CANNOT SIT BY WHILE PAN AM IS NOT PERMITTED TO OPERATE. U.S. CONGRESS AND AIRLINE INDUSTRY ARE VIEWING THIS DISPUTE AS A TEST WHETHER U.S. GOVERNMENT IS PREPARED TO DEFEND LEGITIMATE INDUSTRY LIMITED OFFICIAL USE

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INTERESTS. HENCE CAB HAS PROCEEDED TO SEND TO WHITE HOUSE A RECOMMENDATION THAT U.S. TAKE COUNTERMEASURE OF TERMINATING AIR FRANCE LOS ANGELES-PARIS FLIGHTS. THIS WOULD RESTORE PARITY BY IMPOSING SIMILAR LIMITATIONS ON THE WEST COAST-PARIS OPERATIONS OF BOTH PAN AM AND AIR FRANCE. U.S. WOULD TAKE THIS STEP WITH SADNESS, BUT FRENCH POSITION TO DATE HAS LEFT US NO ALTERNATIVE. HOWEVER, IF FRENCH WOULD ALLOW PAN AM OPERATION DURING PERIOD OF ARBITRATION, U.S. COUNTERMEASURES WOULD BE AVOIDED. WE IN TURN WOULD COOPERATE TO ENSURE THAT ARBITRAL PROCESS WAS SHORT; UNDER U.S. DRAFT COMPROMIS THE PROCESS COULD BE COMPLETED WITHIN 90 DAYS.

D. CAB RECOMMENDATION RE COUNTERMEASURES MUST BE ACTED UPON BY PRESIDENT BY JUNE 10. (FYI. CAB ORDER WOULD BE EFFECTIVE 30 DAYS AFTER WHITE HOUSE CLEARANCE.) AT PRESENT DEPARTMENT HAS NO BASIS FOR RECOMMENDING PRESIDENTIAL DISAPPROVAL, AND OTHER AGENCIES ARE PRESSING FOR APPROVAL. AFFIRMATIVE FRENCH RESPONSE ON INTERIM PAN AM OPERATION WOULD JUSTIFY DISAPPROVAL, BUT IN LIGHT OF JUNE 10 DEADLINE A PROMPT RESPONSE IS CRITICAL.

5. IN EVENT FRENCH ARGUE THAT PROPOSED CAB ACTION IS EXCESSIVE RESPONSE, EMBASSY CAN POINT OUT THAT A THRICE WEEKLY 747 OPERATION COMPARES REASONABLY WITH PAN AM DAILY 727 OPERATION, AND THAT PARITY IS ESTABLISHED BY ELIMINATING BOTH SIDES' WEST COAST-PARIS OPERATION. ADDITIONALLY, PAN AM OPERATION HAS BEEN CLOSED DOWN FOR MORE THAN A MONTH ALREADY WITHOUT ANY ACTION AGAINST AIR FRANCE. FINALLY, CAB ORDER INDICATES IT IS PREPARED TO HEAR ANY ARGUMENTS BY AIR FRANCE THAT THE SCOPE OF COUNTERMEASURES SHOULD BE CHANGED.

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6. DEPUTY LEGAL ADVISER MARKS, HEAD OF U.S. DELEGATION
OF LEGAL EXPERTS, WILL BE IN PARIS STARTING JUNE 6 FOR
OECD MEETINGS. STAYING AT HOTEL D'ISLY. WOULD APPRECIATE
CHANCE TO DISCUSS THIS MATTER WITH AMBASSADOR AND EMBASSY.
VANCE

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